Margaret W. Wong, Esq. (OH 9068)
Attorney for Petitioner
Margaret Wong & Associates Co. LPA
3150 Chester Ave.
Cleveland, Ohio 44114
(216) 566-9908
(216) 566-1125 (fax)
Attorney for Petitioner

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| Osvaldo TORRECILLA GOMEZ,<br><br>Petitioner,<br>v.<br><br>Kevin RAYCRAFT, *in his official capacity* as Acting Field Office Director of the Detroit Field Office, U.S. Immigration and Customs Enforcement;<br><br>Todd LYONS, *in his official capacity* as Acting Director of U.S. Immigration and Customs Enforcement;<br><br>Kristi NOEM, *in her official capacity* as Secretary of U.S. Department of Homeland Security;<br><br>Pamela BONDI, *in her official capacity* as Attorney General of the United States; and<br><br>Daren MARGOLIN, Director for Executive Office for Immigration Review,<br><br>Respondents. | C/A No. 1:26-cv-927<br><br>PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF<br><br>**HEARING REQUESTED**<br>**A #** [redacted] |

## INTRODUCTION

1. Petitioner, Osvaldo Torrecilla Gomez, is harmed by Respondents' draconian new policy reinterpreting immigration detention statutes to preclude plaintiffs from eligibility for bond under the Immigration and Nationality Act, 8 U.S.C. § 1226(a) and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Instead, pursuant to this new policy, Respondents now consider Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of lengthy removal proceedings and appeals.

2. Petitioner is currently detained at the North Lake Correctional Facility in Baldwin, Michigan. He was taken into ICE custody on November 8, 2025. Petitioner has remained detained since then—132 days and counting.

3. He was detained in the early hours of November 7, 2025, in Franklin County, Ohio.

4. Petitioner's detention is unlawful where the Immigration Court has denied jurisdiction to redetermine bond requests for this case. *See Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025).

5. Petitioner will remain detained without the possibility of bond from the Immigration Court. Thus, Petitioner is being held without the opportunity to be heard regarding the lawfulness of detention.

6. Absent an order from this Honorable Court, Petitioner will remain detained without Due Process of the law for the duration of her immigration removal proceedings potentially months to years longer.

7. Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act (INA) and its implementing

regulations. Petitioner, has resided in the U.S. since 2018 and was apprehended in the interior of the U.S. in 2025. He should not be considered an "applicant for admission" who is "seeking admission," and the Honorable Western District Court of Michigan has already held the same in many cases identical on the relevant legal questions. *See, e.g.*, *Corona Lopez v. Raycraft, et al.*, No. 2:26-cv-4 (W.D. Mich. Jan. 28, 2026). Rather, he should be detained pursuant 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

8. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court order Respondents to release Petitioner from custody. In the alternative, he asks that the Court order Respondents provide him with a bond hearing at which DHS bears the burden of proof by clear and convincing evidence.

9. Petitioner is also a member of the class certified in *Bautista v. Santacruz*, C.D.Cal. No. 5:25-cv-01873-SSS-BFM, 2026 U.S. Dist. LEXIS 34057 (Feb. 18, 2026), which vacated the decision of the BIA in *Yajure Hurtado.*

## CUSTODY

10. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the North Lake Correctional Facility in Baldwin, Michigan. *See* Exhibit A, ICE Detainee Locator Result. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

## JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 which authorizes federal courts to grant writs of habeas corpus to individuals held in custody in violation of the Constitution or laws of the United States, 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) and whether the BIA and Immigration Court have jurisdiction over custody redetermination cases for noncitizens who have allegedly unlawfully entered the United States without inspection.

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

## VENUE

14. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in Baldwin, Michigan, at the North Lake Correctional Facility. *See* Exh. A.

15. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving

rise to Petitioner's claims occurred in this District, and Petitioner is detained in this District. 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18. Administrative exhaustion should not be required as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

19. Petitioner already sought and was denied a custody redetermination hearing before an Immigration Judge (IJ) based on the BIA decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. §

1225(b)(2)(A). *See, e.g., Garcia v. Noem*, W.D.Mich. No. 1:25-cv-1271, 2025 U.S. Dist. LEXIS 213734, at *8 (Oct. 29, 2025) ("In sum, the Court declines to enforce the doctrine of prudential exhaustion against Petitioner. Moreover, even if the Court were to conclude that prudential exhaustion is warranted, the Court concludes in the alterative that waiver of exhaustion is appropriate.").

20. The Western District Court of Michigan has held that prudential exhaustion should not be required in comparable cases. *See, e.g., Ovales v. Raycraft*, W.D.Mich. No. 1:26-cv-333, 2026 U.S. Dist. LEXIS 34210, at *5 (Feb. 19, 2026) ("Petitioner's § 2241 petition presents principally legal questions of statutory interpretation, which do not require the record that would be developed if the Court required Petitioner to exhaust her administrative remedies. Moreover, this Court is not bound by, and is not required to give deference to, any agency interpretation of a statute. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 2273, 219 L. Ed. 2d 832 (2024) (discussing that 'courts need not and under the [Administrative Procedure Act (APA)] may not defer to an agency interpretation of the law simply because a statute is ambiguous').").

21. Additionally, the IJ and the BIA lack jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

## PARTIES

22. Petitioner is a citizen and national of Mexico and has resided in the U.S. since 2018. He is an asylum seeker currently detained at the North Lake Correctional Facility in Baldwin, Michigan. ICE has held him in custody since November 8, 2025. He is not subject to a final order of removal. He is being denied access to a bond hearing under the DHS July 2025 policy and BIA decision in *Yajure Hurtado* which held immigration judges no longer have jurisdiction to redetermine custody for individuals like Petitioner. He is under the custody, and in the direct control, of Respondents and their agents.

23. Respondent Kevin Raycraft is Acting Field Office Director of the Detroit Field Office, U.S. Immigration and Customs Enforcement, which has jurisdiction over ICE detention facilities in Michigan. He exercises authority over Petitioner's detention and is sued in his official capacity.

24. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

25. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

26. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the

United States.

27. Respondent Daren Margolin is the Director of the Executive Office for Immigration Review (EOIR). He has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including the conduct of bond hearings. Director Margolin is sued in his official capacity.

## STATEMENT OF FACTS

28. Petitioner is a native and citizen of Mexico. He entered the United States in 2018 and has continuously resided in the United States since that time.

29. Prior to being detained, he resided at [redacted] with his US Citizens wife and child, and intends to continue residing at that address upon release from detention.

30. Petitioner is currently in the custody of U.S. Immigration and Customs Enforcement (ICE) at the North Lake Correctional Facility in Baldwin, Michigan. ICE has held him in custody since November 8, 2025.

31. Petitioner has never been convicted of any crime.

32. Petitioner has a pending application for asylum and withholding of removal in the United States based on a well-founded fear of persecution if returned to Mexico, where [redacted]

33. Petitioner's U.S. citizen wife is in the process of filing a Form I-130 immigrant visa petition on his behalf so that he may lawfully remain in the United States and

continue to build his life with his family. The couple shares a young child, and they are currently waiting the continued genetic analysis appointment on February 2, 2026, in the United States for their son to be evaluated for Autism Spectrum Disorder. The United States offers specialized medical care, early intervention services, and educational resources that are critical to the child's development, and relocating the family to Mexico would impose significant hardship by severely limiting access to comparable treatment and support.

34. Petitioner has never been convicted of any crime, let alone one that would subject him to mandatory detention under INA § 236(c). He is not subject to a final order of removal.

35. Historically, individuals like Petitioner, long-time residents apprehended in the interior of the United States and charged as inadmissible for entering without inspection—were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole.

36. In July 2025, however, DHS adopted a new policy instructing that all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) are to be detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond.

37. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position and holding that noncitizens present in the United States without inspection are "applicants for admission" subject to mandatory detention under § 235(b)(2)(A).

38. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. He has been

categorically denied the opportunity to seek bond, despite his long residence in the United States, his strong family ties, and his clean record.

Federal district courts across the country, including this Court, have rejected DHS's new interpretation of INA § 235(b)(2), finding instead that detention of long-time residents like Petitioner must proceed under INA § 236(a). Nonetheless, ICE continues to hold Petitioner without access to a bond hearing.

**LEGAL BACKGROUND AND ARGUMENT**

39. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

40. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

41. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

42. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

43. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996,

Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

44. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

45. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

46. For decades, long-term residents of the U.S. who entered without inspection and

were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

47. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

48. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

49. Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents had applied § 1226(a) to people like the Petitioner. Respondents' new policies are thus not only contrary to law, but are also arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA.

50. This Court has already determined that individuals like Petitioner were detained pursuant to § 1226(a) and therefore eligible for bond, thus ordering bond hearings in those cases. *Cf., e.g.*, *Salgado Mendoza v. Noem*, No. 1:25-cv-1252, 2025 U.S. Dist. LEXIS 217375, 2025 WL 3077589, at *6 (W.D. Mich. Nov. 4, 2025); *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 U.S. Dist. LEXIS 215480, 2025 WL 3041827, at *5–6 (W.D. Mich. Oct. 31, 2025); *De Jesus Ramirez v. Noem*, No. 1:25-cv-1261, 2025 U.S. Dist. LEXIS 215421, 2025 WL 3039266, at *5 (W.D. Mich. Oct. 31, 2025); *Escobar-Ruiz v. Raycraft*, No. 1:25-cv-1232, 2025 U.S. Dist.

LEXIS 215434, 2025 WL 3039255, at *5 (W.D. Mich. Oct. 31, 2025); *Marin Garcia v. Noem*, No. 1:25-cv-1271, 2025 U.S. Dist. LEXIS 213734, 2025 WL 3017200, at *5 (W.D. Mich. Oct. 29, 2025); *Cervantes Rodriguez v. Noem*, No. 1:25-cv-1196, 2025 U.S. Dist. LEXIS 213730, 2025 WL 3022212, at *6 (W.D. Mich. Oct. 29, 2025); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 U.S. Dist. LEXIS 213732, 2025 WL 3012033, at *9 (W.D. Mich. Oct. 28, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 U.S. Dist. LEXIS 209629, 2025 WL 2992222, at *6 (W.D. Mich. Oct. 24, 2025).

51. Numerous other federal courts have also rejected DHS's interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *see also Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC) (E.D. Cal. Sept. 23, 2025), *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Sept. 25, 2025), and *Chafla v. Scott*, No. 2:25-cv-00437-SDN (D. Maine Sept. 21, 2025).

52. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive

interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024).

53. The detention provisions at 8 U.S.C. § 1226(a) and § 1225(b)(2) were enacted as part of the IIRIRA of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the EOIR issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

54. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

55. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

56. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports

of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphasis added).

57. Furthermore, § 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

58. This approach is consistent with the Supreme Court recognizing that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. years ago.

**COUNT I**
**Violation of 8 U.S.C. § 1226(a)**
**Unlawful Denial of Release on Bond**

59. Petitioner restates and realleges all paragraphs as if fully set forth here.

60. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

61. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

62. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

63. Petitioner's continuing detention is therefore unlawful.

**COUNT II**
**Violation of the Bond Regulations,**
**8 C.F.R. §§ 236.1, 1236.1, and**
**1003.19 Unlawful Denial of Release on Bond**

64. Petitioner restates and realleges all paragraphs as if fully set forth here.

65. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

66. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT III**
**Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy**

67. Petitioner restates and realleges all paragraphs as if fully set forth here.

68. Mandatory detention under § 1225(b)(2) does not apply to long-time residents apprehended in the interior of the United States. Such noncitizens, including Petitioner are detained under § 1226(a) and eligible for release on bond.

69. Respondents' application of § 1225(b)(2) to Petitioner contradicts the statutory scheme and departs from decades of consistent agency interpretation. This policy is arbitrary, capricious, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

**COUNT IV**
**Violation of the Administrative Procedure Act**
**Failure to Observe Required Procedures**

70. Petitioner restates and realleges all paragraphs as if fully set forth here.

71. Under the APA, a reviewing court must set aside agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

72. The APA requires agencies to engage in public notice-and-comment rulemaking before promulgating new rules or amending existing ones. 5 U.S.C. § 553(b), (c).

73. Respondents failed to comply with the APA by adopting and enforcing a new policy that reclassified individuals like Petitioner as subject to mandatory detention under § 1225(b)(2), without any rulemaking, notice, or opportunity to comment.

**COUNT V**
**Violation of the Fifth Amendment**
**Due Process**

74. Petitioner restates and realleges all paragraphs as if fully set forth here.

75. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

**76.** Respondents' detention of Petitioner under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;

2. Order Respondents to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;

3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Petitioner's immediate release from custody under reasonable conditions of supervision;

4. In the alternative, order Respondents to provide him with an immediate bond hearing before an Immigration Judge applying § 236(a) and requiring the DHS to bear the burden of proof by clear and convincing evidence;

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;

7. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;

8. Declare that Petitioner's detention violates the INA;

9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

10. Declare that Petitioner's detention is arbitrary, capricious, and in violation of the Administrative Procedure Act;

11. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5

U.S.C. § 504 and 28 U.S.C. § 2412; and

12. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

/s/ *Margaret W. Wong*
Margaret W. Wong, Esq. (Ohio 9068)
Margaret Wong & Associates Co. LPA
3150 Chester Ave.
Cleveland, Ohio 44114
(216) 566-9908
(216) 566-1125 (fax)
wong@imwong.com
*Counsel for Petitioner*

Dated: March 20, 2026

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Osvaldo Torrecilla Gomez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 20th day of March, 2026.

*/s/ Margaret W. Wong*
Margaret W. Wong, Esq.

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